

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:23-cv-10511-WGY
4 Vol 1, Pages 1 - 87

5
6 UNITED STATES OF AMERICA, et al,
7 Plaintiffs

8 vs.

9
10 JETBLUE AIRWAYS CORPORATION, et al,
11 Defendants

12 *****

13
14 For Bench Trial Before:
15 Judge William G. Young

16
17 United States District Court
18 District of Massachusetts (Boston)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Thursday, November 2, 2023

22 *****

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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DAVID CLARK (Continued.)

By Mr. Thornburgh: 8

By Mr. Shores:

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE CLERK: Civil Action 23-10511, the United
4 States of America, et al vs. JetBlue Airways
5 Corporation, et al. The Court is in session.

6 Mr. Clark, do you understand that you're still
7 under oath?

8 THE WITNESS: Yes, I do.

9 THE COURT: And --

10 MR. SHORES: Your Honor, may I raise one thing
11 before we start the testimony?

12 THE COURT: Yes.

13 MR. SHORES: Okay.

14 There are two pieces of physical evidence in this
15 case that will discussed by witnesses that are coming up
16 very soon. I'll lay the foundation for them. It's
17 Number 623 and 624 on the exhibit list. It's two rows
18 of JetBlue seats and --

19 THE COURT: Right. Ms. Gaudet has told me
20 something about that.

21 And you want me to take a view of them?

22 MR. SHORES: We would welcome that if you're
23 interested, your Honor.

24 THE COURT: Well I like views.

25 (Laughter.)

1 THE COURT: I once took a view of a swamp and fell
2 in the water.

3 (Laughter.)

4 MR. SHORES: I'll try to make sure this is the
5 same --

6 THE COURT: But here's how -- I'm told they're
7 nearby.

8 MR. SHORES: They are, your Honor.

9 THE COURT: I don't think we ought to take time
10 9:00 till 1:00. We'll scheduled a time. I don't want
11 to do it tomorrow, but we'll schedule a time and I won't
12 count it against the trial time. I take a view with the
13 Court Reporter and we look at whatever is to be looked
14 at.

15 Is that satisfactory?

16 MR. SHORES: Yes, your Honor. And shall we
17 coordinate with Ms. Gaudet about that.

18 THE COURT: Exactly.

19 MR. DUFFY: And we have no objection to the
20 process, your Honor. We would request that any time be
21 allocated against the defendants' allotment.

22 THE COURT: No, I think I'm going to do it in the
23 afternoon and that's fine.

24 MR. DUFFY: All right, that's fine.

25 THE COURT: Well I'm counting this time. And now

1 that we're on a side issue, let me say something I was
2 going to say during the break.

3 I have to say I'm more than satisfied with how you
4 people are presenting the case. I think I'm
5 understanding the facts and the way I can go through
6 these notebooks is fine. But I have made a mistake in
7 my protocol for depositions.

8 I've been through one deposition. I've carefully
9 -- the one you wanted me to start on, sort of
10 corroborated things I've already heard, I've carefully
11 reviewed the objections, overruled them all.

12 It cannot work this way. There is a public
13 interest in expedition here. So I'm changing the
14 protocol. But it will have no effect on you, save as
15 you are trying to persuade the Court.

16 I've decided now that all deposition excerpts that
17 you've given me are admitted in evidence. Those to
18 which objections have been raised are provisionally
19 admitted in evidence. That means you may rely upon them
20 in argument and you may use them in your requested
21 findings.

22 I imagine, to the extent you use them in your
23 requested findings, they'll be citations to them. Those
24 I will all look at because I'll be considering whether
25 the requested finding actually persuades me. If, when I

1 look at them, and I assure you I will, you've cited
2 something to which an objection is made, I will rule on
3 the objection and, as I said, I'll endorse it right on
4 the transcript so the record is clear.

5 When I come to write my opinion, um, I don't say
6 I'm going to say, because it's going to be obvious, on
7 what I have relied, but the rest of it is open to you,
8 should there be any appeal, to say "He just couldn't
9 have found that," or whatever. That's how we're going
10 to proceed.

11 Now let's get going. And, Mr. Thornburgh, you may
12 continue.

13 MR. THORNBURGH: Thank you, your Honor.

14

15 DIRECT EXAMINATION BY MR. THORNBURGH: (Continued.)

16 Q. Mr. Clark, welcome back.

17 Did you discuss the substance of your testimony
18 that you provided yesterday with anyone since you left
19 the stand?

20 A. I have not.

21 Q. And have you discussed the substance of the
22 testimony you offer today with anyone since leaving the
23 stand yesterday?

24 A. No, I have not.

25 Q. Okay. Thank you, Mr. Clark.

1 MR. THORNBURGH: If we could, please, um, repull
2 up Clark Demonstrative A, please.

3 (On screen.)

4 Q. Mr. Clark, when we finished yesterday we were
5 discussing the fare options that JetBlue offers today,
6 do you recall that?

7 A. I do.

8 Q. JetBlue makes Blue Basic available in nearly all
9 the markets it serves today, correct?

10 A. Correct. And in fact we now do make it available
11 in all markets we serve.

12 Q. That was a relatively recent change, there used to
13 be some small categories of markets that -- where
14 JetBlue did not offer Blue Basic?

15 A. That's correct, it's a recent change.

16 Q. So, Mr. Clark, when a customer goes to JetBlue's
17 website and puts in their proposed itinerary, the
18 default lowest fare shown to them would be a fare
19 associated with the Blue Basic fare option, is that
20 fair?

21 A. That's correct.

22 Q. And customers who want to purchase a more bundled
23 fare option, such as the Blue Fare option, for example,
24 they have to pay an additional amount of money to buy up
25 from Blue Basic to Blue, is that accurate?

1 A. Yes.

2 Q. JetBlue sets the buy-up amount on a
3 market-by-market basis, is that fair?

4 A. Correct.

5 Q. And one of the two main objectives that JetBlue
6 has in setting the specific buy-up amount, between Blue
7 Basic and Blue, is to maximize the amount of revenue
8 that JetBlue earns, correct?

9 A. That's one of the two, yes.

10 Q. And so in order to do that, Mr. Clark, JetBlue
11 would want to set the buy-up amount at the highest level
12 it can while still ensuring enough customers would buy
13 up to the Blue bundled fare, right?

14 A. There's generally an optimal buy-up amount that
15 yields the most revenue.

16 Q. If JetBlue creates too large of a gap, let's say
17 between Blue Basic and Blue, there is a list of people
18 who would have been willing to buy up to that more
19 bundled fare option who will instead stick with Blue
20 Basic, correct?

21 A. Correct.

22 Q. And, Mr. Clark, when JetBlue raises fares in a
23 particular market, it would typically raise those fares
24 across all of its fare options such that you ensure
25 there remain gaps between each of the different fare

1 options, is that fair?

2 A. That's most often the case, yeah.

3 Q. So in other words JetBlue wouldn't typically just
4 raise the price of Blue Basic fares, for example,
5 because that would eliminate the gap between Blue Basic
6 and Blue, right?

7 A. Not typically, although there's exceptions at
8 times. But not typically.

9 Q. Okay, thank you, Mr. Clark.

10 Now, Mr. Clark, prior to late 2019, JetBlue did
11 not offer a Blue Basic, correct?

12 A. Correct, we introduced Blue Basic in November of
13 2019.

14 Q. The least-bundled fare option that JetBlue offered
15 prior to 2019 was its Blue Fare, right?

16 A. Correct.

17 Q. Okay. JetBlue ultimately did introduce Blue Basic
18 to better compete against the unbundled fare options
19 offered by other airlines, right?

20 A. Correct.

21 Q. This included Spirit's unbundled fare, correct?

22 A. That was one of them, but that was not what
23 triggered us to launch the Blue Basic.

24 Q. Would you agree -- apologies.

25 Would you agree with me that the industry trend

1 towards unbundling was initially set in motion by
2 Spirit?

3 A. Um, in the United States perhaps. Not globally.

4 Q. Part of the reason JetBlue introduced Blue Basic
5 was to better capture price-sensitive customers, right,
6 Mr. Clark?

7 A. That was one of the objectives.

8 Q. Okay. So let's take a quick look at some evidence
9 that describes JetBlue's rationale for introducing Blue
10 Basic.

11 MR. THORNBURGH: If you would please turn in your
12 binder to the tab marked LR.

13 THE COURT: Marked? Say it again?

14 MR. THORNBURGH: LR, your Honor.

15 THE COURT: Thank you.

16 A. (Turns.) I'm at LR.

17 Q. Okay. So, Mr. Clark, this is an e-mail that you
18 sent in January of 2018 to Christina Lind at JetBlue,
19 correct?

20 A. Um, yes.

21 Q. And at the time you were the Vice-President of
22 Sales and Revenue Management, right?

23 A. Correct.

24 Q. And you indicate in your e-mail here that you
25 presented the attached presentation, right?

1 A. Yes, that's correct.

2 Q. Okay.

3 MR. THORNBURGH: Your Honor, plaintiffs ask that
4 LR be moved in evidence as Exhibit 650.

5 THE COURT: No objection?

6 MR. SHORES: No objection, your Honor.

7 THE COURT: It is admitted, LR is admitted as 650.
8 (Exhibit 650, marked.)

9 Q. Mr. Clark --

10 MR. THORNBURGH: If we can publish the document to
11 the gallery.

12 Q. Mr. Clark, the "exec crew" that you reference here
13 in your e-mail, that is what is today known inside
14 JetBlue as the Senior Leadership Team, correct?

15 A. Correct.

16 Q. And that would include the CEO, Mr. Robin Hayes,
17 correct?

18 A. Yes, he was part of the exec crew at that time.

19 Q. Okay. If I can direct your attention now to the
20 attachment in the second slide, which has a Bates number
21 ending in 659. The title of the slide is "Project
22 Segmentation Discussion."

23 Do you see that, Mr. Clark?

24 MR. SHORES: You mean "Products"?

25 Q. Excuse me, "Product Segmentation Discussion."

1 MR. THORNBURGH: Thank you.

2 A. Correct, "Product Segmentation Discussion."

3 Q. You're listed as one of the presenters on this
4 slide, correct, Mr. Clark?

5 A. Correct.

6 Q. "The meeting was intended to provide the JetBlue
7 executive crew with an update on competitors' product
8 segmentation efforts," right?

9 A. Correct.

10 Q. And that refers to the Basic Economy fare options
11 that legacy airlines have been introducing at this time,
12 correct?

13 A. Correct.

14 Q. And part of the discussion was going to be about
15 how JetBlue was going to respond to these developments,
16 right?

17 A. Correct.

18 Q. You understood at this time that the legacy's
19 Basic Economy offering was allowing those airlines to
20 compete aggressively against ultra-low-cost carriers
21 like Spirit, right?

22 A. That was the understanding at the time, that's
23 what's listed here, yes.

24 Q. Okay.

25 MR. THORNBURGH: Let's turn to the fifth side of

1 this exhibit please, that page has a Bates number ending
2 in 662.

3 (On screen.)

4 Q. So, Mr. Clark, this slide depicts the impact that
5 Basic Economy has had at this time on how JetBlue
6 competes in both ULCC markets and nonULCC markets,
7 correct?

8 A. Correct.

9 Q. And to be clear, at this time JetBlue had not yet
10 introduced its Blue Basic product offering, right?

11 A. Correct.

12 Q. A ULCC market, as depicted on this side,
13 Mr. Clark, refers to a market where JetBlue competes
14 against an ultra-low-cost carrier or ULCC, right?

15 A. Correct.

16 Q. And the only ULCC being depicted on this side is
17 Spirit, correct?

18 A. That's the one we use for this example, yes.

19 Q. Frontier does not appear on this side, correct,
20 Mr. Clark?

21 A. Not on this slide, no.

22 Q. Okay, let's focus on the top half of this side, if
23 we could for the moment.

24 The first bullet on the top left indicates that
25 JetBlue was previously able to charge higher fares than

1 Spirit, right?

2 A. Um, yes, it uses the words "command the price
3 premium," but it means we're getting more revenue per
4 seat than they were.

5 Q. And "NK" that you just alluded to is referencing
6 Spirit there, correct?

7 A. Correct.

8 Q. And that is consistent with what is depicted on
9 the left side of the top graphic there, correct?

10 A. Correct.

11 Q. The JetBlue logo is above the Spirit logo, right?

12 A. Yes.

13 Q. And then the right side of that graphic indicates
14 that JetBlue was now, at this time, having to match the
15 standard fares offered by Spirit, correct?

16 A. I think it's an oversimplification, um, I do not
17 believe we were matching their fares one-to-one at this
18 time. But it's illustrative.

19 Q. That's what's indicated on this slide, correct,
20 Mr. Clark?

21 A. It is showing that at a high illustrative level,
22 that we're needing to price near the Basic Economy
23 levels of American, United, and Delta, and that's also
24 at a high illustrative level, you know roughly the
25 ballpark of Spirit there.

1 Q. That JetBlue's having to price at the Basic
2 Economy levels of those airlines you mentioned, but also
3 at the level that Spirit was offering, correct,
4 Mr. Clark?

5 A. My point is I think if you break it down by
6 dollars and make it less illustrative and high level,
7 you would see Spirit's still below, um, the other levels
8 on average.

9 Q. I understand, Mr. Clark. I have a relatively more
10 simple question here. Which is as depicted on this
11 line, JetBlue is having to match the fare offering of
12 Spirit Airlines, correct?

13 THE COURT: Well the slide speaks for itself.
14 He's given some nuance there. So I think we can move
15 on. I see how things have been laid out on the slide.

16 Go ahead.

17 Q. Mr. Clark, the bottom graphic here is depicting
18 how competition has similarly changed in markets without
19 an ultra-low-cost carrier, right?

20 A. Correct.

21 Q. In a market without an ultra-low-cost carrier
22 would be a route that is not served by an ultra-low-cost
23 carrier, right?

24 A. Correct.

25 Q. As the text at the bottom right corner of the side

1 indicates, "After other airlines had introduced their
2 Basic Economy fares, JetBlue was no longer able to price
3 above them or Spirit's unbundled fare," right?

4 A. Um --

5 MR. SHORES: Objection, mischaracterizes the
6 document.

7 THE COURT: It misstates the document by including
8 Spirit, but maybe that's the question he wants to ask.

9 Is it?

10 MR. THORNBURGH: Yes, your Honor.

11 THE COURT: All right, if you understand it, you
12 may answer.

13 A. Can you repeat the question, please?

14 Q. Sure. At this time, Mr. Clark, JetBlue was no
15 longer able to drive a pricing premium as compared to
16 both the legacy's Basic Economy offerings and also
17 Spirit's unbundled fare, right?

18 A. Um, I don't believe that's correct. If you look
19 at historical data, we're still driving a price premium
20 versus Spirit's unbundled fare. Perhaps it was smaller
21 than it had been, but it was still sizable.

22 THE COURT: And that's on routes that Spirit
23 didn't fly?

24 THE WITNESS: I was referring to Spirit as to both
25 -- that both JetBlue and the ULCCs, um, serve nonstop.

1 We were still, um -- we were still commanding a revenue
2 premium per seat versus them.

3 THE COURT: But in this presentation he's asking,
4 and the way I'm following it is, the slide we're talking
5 about talks about nonULCC markets, and I assume that
6 means markets where these ultra-low-cost carriers don't
7 fly.

8 THE WITNESS: So at this time, which was the
9 beginning of 2018, during this period, we were having
10 difficulty generating a price premium versus the
11 legacy's Basic Economy fares. It was a new concept at
12 the time. That has changed drastically over time. But
13 that's how it was at this time nearly 6 years ago.

14 THE COURT: And this slide makes the point that
15 JetBlue had to price similar to the legacy's Basic
16 Economy fares?

17 THE WITNESS: Correct, at this time we did. Yes.

18 THE COURT: All right.

19 Q. Mr. Clark, in your testimony just a minute ago in
20 response to the Judge's question, you said that you
21 believe that the situation has changed drastically since
22 this time. Is that your -- is my understanding correct?

23 A. Correct.

24 Q. And when did it change drastically such that
25 JetBlue was able to again, um, give a price premium over

1 Spirit?

2 A. Um, I believe the data shows that we've always had
3 a price premium versus Spirit, that's continued
4 throughout. At this time it had temporarily narrowed.
5 But that throughout we've always been able to drive,
6 given our superior on-board product, a price premium
7 versus Spirit.

8 Q. Okay, so at this time you agree that the premium
9 that JetBlue has been able to capture versus Spirit had
10 narrowed, correct?

11 A. Potentially. It was six years and I don't recall
12 exactly, it's not on this chart, but potentially, yes.

13 Q. And, um, when did -- in your best recollection,
14 when did that temporary narrowing, when did that cease
15 to exist such that JetBlue was able to now command a
16 larger price premium over Spirit again?

17 A. I don't recall specifically. We need to look at
18 the data.

19 Q. Okay, fair enough.

20 MR. THORNBURGH: If we could now go to Slide 8 of
21 this document, please. It has a Bates number ending in
22 665.

23 (On screen.)

24 Q. Mr. Clark, this slide is describing three
25 strategies that JetBlue was considering at this time in

1 response to the introduction of more unbundled fares in
2 the industry, correct?

3 A. It's outlining three paths forward. (Looks.) It
4 doesn't give all the context you just did, but it
5 certainly outlines three paths forward from this
6 discussion.

7 Q. The first strategy that JetBlue was considering
8 was to "create a fare option tailored to price-sensitive
9 customers," correct?

10 A. It says "in order to compete against the other
11 airlines' Basic Economy offerings," that, yes, it
12 targeted the legacies is how I interpreted it.

13 Q. JetBlue ultimately did pursue this strategy of
14 "creating a new basic fare offering tailored to
15 price-sensitive customers," correct, Mr. Clark?

16 A. We did.

17 Q. That strategy led to the introduction of what
18 today is known as "Blue Basic," correct?

19 A. That's correct.

20 MR. THORNBURGH: Okay, you can put that document
21 aside, Mr. Clark.

22 Q. Mr. Clark, you would agree with me, right, that
23 the industry evolution that led to the introduction of
24 unbundled fares has been beneficial for customers,
25 correct?

1 A. I do think customer choice is a good thing, yes.

2 Q. And as you just said, it's given consumers more
3 choice to purchase the product amenities that they
4 value, right?

5 A. That's correct.

6 Q. And it has made it possible for additional
7 consumers to fly who otherwise could not afford to do so
8 previously, right?

9 A. Yes, that's one of the benefits of more choices,
10 more customers find a choice that they're comfortable
11 with or find attractive.

12 Q. Okay. If I could please ask you to turn in your
13 tab to the -- in your binder, excuse me, to a tab marked
14 NB, please.

15 A. Okay. (Turns.) I'm there.

16 THE COURT: "MB," is it?

17 MR. THORNBURGH: "N" as in "Nancy," your Honor.

18 THE COURT: Oh, "N."

19 MR. THORNBURGH: And it's "B" as in "boy."

20 THE COURT: I'm sorry.

21 MR. THORNBURGH: No, that's okay.

22 THE COURT: All right.

23 Go ahead.

24 Q. So, Mr. Clark, this is an e-mail conversation you
25 had with JetBlue colleagues Marty St. George and Rob

1 Land in February of 2018, correct?

2 A. Um, that's correct, they're both copied on this
3 e-mail.

4 Q. Mr. St. George was JetBlue's Chief Commercial
5 Officer at the time, correct?

6 A. Correct.

7 Q. And Mr. Land was and is, still remaining today, a
8 lawyer on JetBlue's Government Affairs Team, correct?

9 A. Correct.

10 Q. Okay.

11 MR. THORNBURGH: Your Honor, plaintiffs request
12 that NB be admitted in evidence as Exhibit 651.

13 THE COURT: No objection to that?

14 MR. SHORES: No objection, your Honor.

15 THE COURT: NB is admitted Exhibit 651 in
16 evidence.

17 (Exhibit 651, marked.)

18 Q. So Mr. Clark, focusing your attention for the
19 moment on Page 2 of the document. Mr. Land e-mailed you
20 on February 10th, 2018, correct?

21 A. Yes.

22 Q. And in the e-mail Mr. Land appears to be
23 expressing some concerns about the materials he has
24 reviewed in reference to project Epcot, correct?

25 A. That's correct.

1 Q. Project Epcot is another name for Fare Options 2.0
2 which led to the introduction of Blue Basic, correct?

3 A. It was the name earlier before we had fully
4 decided on a path. So at this time we're still
5 considering lots of options. It eventually led to
6 Options 2.0, but that decision was not made for another
7 5 or 6 months.

8 Q. Okay. So Mr. Land's concerns here was related to
9 how the various scenarios JetBlue was contemplating at
10 the time regarding project Epcot might affect customers,
11 right?

12 A. I think that accurate, yes.

13 Q. Okay. So let's now -- I want to go back to the
14 e-mail that you wrote in response to Mr. Land at the top
15 of Page 2.

16 You indicate in your e-mail that you actually
17 think that these developments are good for customers,
18 right?

19 A. Correct, that's what I state.

20 Q. And let's go back to the first page of this e-mail
21 string.

22 You provided a more fulsome response back to
23 Mr. Land's a couple of days later, correct?

24 A. Yes, on the 11th, the next day.

25 Q. The first thing that you note in your e-mail is

1 that "The larger industry contacts is that the airline
2 industry appears to be evolving from its traditional
3 all-inclusive model in which many couldn't afford to fly
4 and those who did had to pay for things they didn't
5 value, to a customer choice model where customers have a
6 lot more ability to select the attributes they value
7 such as they would in a hotel or restaurant."

8 Mr. Clark, you still agree with that sentiment
9 today, correct?

10 A. I think it's -- which part of the sentiment?
11 There's a couple pieces. Just to be accurate, which
12 part?

13 Q. The entire sentiment expressed in the e-mail that
14 you wrote on February 11th, 2018, the sentence that I
15 just read, Mr. Clark.

16 A. Yes, I agree still.

17 Q. Okay. You go on in your e-mail to note, "I
18 believe this is good for consumers overall as it lowers
19 the price of entry for air travel and allows travelers
20 to customize their experience to their personal
21 preferences."

22 Do you still agree with that sentiment, Mr. Clark?

23 A. I do.

24 Q. Now in the next paragraph, in the first sentence,
25 you note that "While some customers will lament this

1 development, the reality is that the product amenities
2 that used to be included in a bundled fare are still
3 available for consumers to purchase," correct?

4 A. Correct.

5 Q. And then in the third paragraph you indicate that
6 "Unbundling is better for consumers than potential
7 alternatives," correct?

8 A. (Pause.) Sorry, I'm just -- could you repeat the
9 question, please. I'm reviewing what I wrote at the
10 time.

11 Q. Sure.

12 In the third paragraph you indicate that
13 "Unbundling is better for consumers than potential
14 alternatives," right?

15 A. Um, yes, compared to alternatives like fewer
16 flight choices, higher ticket prices, and less access to
17 air travel, correct.

18 Q. And let me just, for the record, because you left
19 off a phrase there at the end of your sentence, let me
20 just read it for the record.

21 And your view, as you indicated in your e-mail
22 here, is that "other alternatives could lead to fewer
23 flight choices, higher ticket prices, and less access to
24 air travel for price-sensitive customers," that's what
25 you wrote, correct, Mr. Clark?

1 A. That's correct.

2 Q. You previously described your e-mail here as
3 "beautifully written," right?

4 A. Um, I don't recall that, but I certainly may have.
5 (Laughter.)

6 Q. I'm happy to point you to your prior testimony,
7 Mr. Clark, and you can check to confirm that.

8 A. Um, I don't doubt, um, that I would have said that
9 previously.

10 Q. Okay. Thank you. You can put that document aside
11 now.

12 Mr. Clark, JetBlue eventually did start offering
13 Blue Basic in late 2019, correct?

14 A. Yes, that's correct.

15 Q. And when JetBlue first introduced Blue Basic in
16 2019, the fare option included both a carry-on bag and a
17 personal item that customers could bring on board with
18 them, correct?

19 A. That's correct.

20 Q. And then as we discussed previously yesterday,
21 today Blue Basic no longer includes that carry-on bag
22 allowance, correct?

23 A. Correct, it was done for multiple reasons,
24 including some operation issues.

25 Q. Okay. So we discussed yesterday, Mr. Clark, that

1 JetBlue initiated some price testing in 2020 as part of
2 what was then known as the "Spirit Competitive
3 Strategy," right?

4 A. Correct.

5 Q. And after conducting this testing in late 2020, as
6 you just alluded to, JetBlue made a change to its Blue
7 Basic offering, right?

8 A. The two were unrelated. We ran a test in 2020, we
9 made a change afterwards, but it wasn't because of the
10 results of the test.

11 Q. So in your view the testing that JetBlue did was
12 completely unrelated to a change that occurred with
13 regards to JetBlue unbundling the carry-on bag from Blue
14 Basic, is that correct?

15 A. That's my recollection, that they were largely
16 separate.

17 Q. Okay. Well let's take a look at a document that
18 describes JetBlue's decision to remove the carry-on bag
19 from Blue Basic.

20 If you would please turn in your binder to the tab
21 marked LO, please.

22 (On screen.)

23 A. (Turns.) I'm there.

24 Q. Mr. Clark, this is an e-mail that you sent on
25 November 6th, 2020, correct?

1 A. Correct.

2 Q. And in the e-mail you are transmitting materials
3 in reference to an upcoming JetBlue Senior Leadership
4 Team meeting regarding "Customer Offering Evolution,"
5 correct?

6 A. Correct.

7 Q. And, Mr. Clark, you would have been one of the
8 presenters for this meeting, correct?

9 A. Um, likely, but I don't recall specifically. But
10 likely.

11 Q. Okay.

12 MR. THORNBURGH: Your Honor, plaintiffs request
13 that Exhibit LO be admitted in evidence as Exhibit 652.

14 THE COURT: Objection?

15 MR. SHORES: No objection.

16 THE COURT: It's admitted in evidence LO 652, in
17 evidence.

18 (Exhibit 652, marked.)

19 Q. Mr. Clark, let's go to Page 2 --

20 MR. THORNBURGH: Can we please publish the
21 document for the Court now.

22 Q. If you would please -- let me go to Page 12 of the
23 document, there's a slide there with the Bates number
24 ending in 862 with the heading "Strategic Need to
25 Consider Carry-on Baggage Changes."

1 Mr. Clark, this slide is describing why JetBlue
2 felt it was necessary to change its carry-on baggage
3 policies for Blue Basic, correct?

4 A. Um, just give me a moment to review it, please.

5 Q. Sure.

6 A. (Looks.) I've reviewed it. Could you please
7 repeat the question.

8 Q. Sure.

9 So, Mr. Clark, this slide is describing why
10 JetBlue felt it necessary to change its carry-on baggage
11 policy for Blue Basic, correct?

12 A. Correct, it's listing four reasons.

13 Q. Okay. And so, Mr. Clark, we talked yesterday
14 about how Spirit had grown rapidly in JetBlue markets in
15 2019, right?

16 A. Yes.

17 Q. And as indicated on the slide, Spirit grew 87
18 percent in JetBlue markets in the three years leading up
19 to 2019, correct?

20 A. That's what the slide indicates, yes.

21 Q. And as of November 2020 when the slide was
22 created, JetBlue continued to believe that Spirit had
23 the strongest competitive offering for price-sensitive
24 customers, correct?

25 A. No, that's not how I interpreted that bullet.

1 Q. How would you interpret that bullet, Mr. Clark?

2 A. That Spirit is growing more slowly against OAs,
3 the other airlines who have the strongest competitive
4 offering. "With strongest competitive offering" is
5 talking about the OAs.

6 Q. Okay. Mr. Clark, JetBlue had found that when
7 Spirit enters a market where JetBlue is operating,
8 JetBlue's fares and revenue, quote, "decrease by more
9 than 10 percent," right?

10 A. Yes, at this time that's what it says.

11 Q. The reference to "summer 2020 tests" here, refers
12 to the ULCC testing that we just discussed a few minutes
13 ago, right?

14 A. Um, yes, I believe it refers to the pricing test
15 that was done in that first month of covid in a very
16 unique customer demand environment.

17 Q. So, Mr. Clark, this slide seems to link the price
18 testing that JetBlue had done to JetBlue's ultimate
19 decision to change the carry-on baggage policy
20 associated with Blue Basic, correct?

21 A. The slide appears to link, um -- it's a bit
22 surprising to me because I don't recall there being a
23 strong link. I'm not sure if there's other documents
24 supporting this or just one bullet.

25 Q. As the slide indicates, the testing that JetBlue

1 did revealed that "JetBlue faced revenue challenges when
2 it priced significantly above Spirit," correct?

3 A. I think the context is really important here.
4 This is the depths of covid, industry demand is probably
5 at 25, 30 percent of historical levels, there's lots of
6 empty seats, way more seats than customers. So it was a
7 very unique and challenging time for pricing.

8 Q. I understand that, Mr. Clark, and I'm sure your
9 counsel will be happy to ask you questions and allow you
10 to provide the context, but for right now my question is
11 actually just a little bit simpler.

12 Which is that the testing that JetBlue did at this
13 time, um, demonstrated that JetBlue faced revenue
14 challenges when it priced significantly above Spirit,
15 correct?

16 MR. SHORES: Objection, asked and answered.

17 THE COURT: Overruled. You may have it.

18 A. It indicates that during this time period,
19 December of 2020, there's challenges pricing
20 significantly above ULCCs.

21 Q. And in fact, Mr. Clark, JetBlue found, through its
22 revenue testing, that matching Spirit's fares also
23 produced the best revenue results for JetBlue, correct?

24 A. I don't recall that as a major conclusion. We
25 have not operated that way in the three-plus years

1 since.

2 MR. THORNBURGH: Can we quickly go to Page 41 of
3 this exhibit please. It has a Bates number ending in
4 891.

5 A. (Looks.) Yeah, I'm on that page.

6 Q. Great. Just waiting for that slide, it takes a
7 couple of seconds.

8 (On screen.)

9 Q. Okay. So, Mr. Clark, directing your attention
10 here to the first subsection of the slide, it indicates
11 that "Matching the bottom end of ULCC fare structure
12 provides the most options for maximizing revenue per
13 flight," right?

14 A. I see that, yes.

15 Q. And so that seems to be consistent with the notion
16 that JetBlue found through its testing that matching
17 Spirit's fares also produced the best revenue results
18 for JetBlue?

19 A. I don't see that indicated. It refers to the most
20 options.

21 MR. THORNBURGH: Can we go to the next slide,
22 please.

23 THE COURT: The next page?

24 MR. THORNBURGH: The next page.

25 (On screen.)

1 THE COURT: My folder doesn't have a next page.

2 MR. SHORES: I don't have a next page.

3 THE COURT: Nor do I.

4 MR. THORNBURGH: Sure. Sorry.

5 Can we go to Slide 37, please.

6 THE COURT: And that has a Bates number?

7 MR. THORNBURGH: Ending in 888, your Honor.

8 THE COURT: Thank you.

9 (On screen.)

10 Q. Okay. So, Mr. Clark, this slide is describing the
11 results of the ULCC price testing that JetBlue
12 performed, correct?

13 A. Um, correct.

14 Q. And if you look at the result section, it reads
15 "In general we saw positive booking trends in groups
16 where we were closely aligned to ULCCs, match and
17 premium," right?

18 A. I see that, yes.

19 Q. And then in the next bullet it reads "Match
20 slightly outperformed other test groups until August,"
21 correct?

22 A. Correct. Again it says "summer of 2020," so a
23 very unique time.

24 Q. But "match" here, Mr. Clark, would refer to
25 JetBlue matching the fares offered by other ultra-low-

1 cost carriers including Spirit, correct?

2 A. Correct, and this says "Match slightly
3 outperformed other test groups until August."

4 Q. Okay, you can put that document aside, Mr. Clark.

5 And now I want to direct your attention to the tab
6 in your binder marked GH, please.

7 A. (Turns.)

8 Q. Mr. Clark, this is another e-mail conversation
9 that you were a part of from October of 2019, correct?

10 A. Correct.

11 Q. And, um, you write an e-mail that appears at the
12 top of this exhibit, correct?

13 A. Correct, the e-mail at the top is written by me.

14 Q. Okay.

15 MR. THORNBURGH: Your Honor, plaintiffs ask that
16 GH be moved in evidence as Exhibit 653.

17 THE COURT: No objection?

18 MR. SHORES: No objection, your Honor.

19 THE COURT: GH is admitted, Exhibit 653.

20 (Exhibit 653, marked.)

21 Q. Mr. Clark, I just want to point out --

22 MR. THORNBURGH: If we could publish this for the
23 gallery, please.

24 Q. Yesterday, Mr. Clark, I asked you some questions
25 about "Spirit's key weapon." Do you recall that?

1 A. Um, frankly I don't recall that from yesterday,
2 but it's certainly possible.

3 Q. Okay. So just directing your attention now to the
4 second paragraph of your e-mail.

5 You indicate here that "Spirit's key weapon is its
6 very low costs and the very low fares they enable.
7 Customers most interested in the absolute lowest fare
8 may find their offer compelling."

9 That's what you wrote, correct, Mr. Clark?

10 A. Yes, that's what I wrote at the time, four years
11 ago.

12 Q. Okay, you can put that document aside.

13 I'd now like to ask that you turn to the tab in
14 your binder marked DH, please.

15 A. (Turns.)

16 Q. Mr. Clark, this is a very short e-mail that you
17 wrote to yourself in December of 2022. Correct?

18 A. Yes, it appears that way.

19 Q. So this was less than a year ago, correct?

20 A. Correct.

21 MR. THORNBURGH: Your Honor, plaintiffs ask that
22 Exhibit DH be moved into evidence as Exhibit 654.

23 THE COURT: Any objection?

24 MR. SHORES: No objection.

25 THE COURT: DH is admitted, Exhibit 654.

1 (Exhibit 654, marked.)

2 Q. So it appears here, Mr. Clark, that you are --

3 MR. THORNBURGH: And can we publish this for the
4 gallery please.

5 Q. Mr. Clark, it appears that you are responding to a
6 recent Spirit earnings report here, correct?

7 A. That's my assumption as well, yes.

8 Q. Now "TRASM" here refers to "Total Revenue per
9 Available Seat Miles," right?

10 A. Correct.

11 Q. And "ASM" here refer to "Available Seat Miles,"
12 right?

13 A. Correct.

14 Q. And this would be notable because typically if you
15 increase capacity, or ASMs, it makes it more difficult
16 for unit revenue to grow as well, correct?

17 MR. SHORES: Objection, vague.

18 THE COURT: Oh, no, I understand it, and I assume
19 he does.

20 A. During typical times that is true. This is during
21 -- it's part of the height of the covid recovery, so
22 demand was accelerating pretty quickly.

23 Q. Mr. Clark, just to get in for reference, this is
24 less than a year ago in December of 2022, correct?

25 A. Correct.

1 Q. And just for the record, when is your -- when you
2 spoke about the "height," in your mind when did the
3 covid recovery end?

4 A. The -- so there was multiple phases to it, but
5 there was a pent-up demand phase that ran through the
6 second half of 2022 through the first half of 2023. So
7 domestically the recovery, I would say, was complete,
8 and that pent-up demand ran through by the mid of 2023.

9 Q. So less than a few months ago, is that your
10 testimony?

11 A. Um, yes, domestically.

12 Q. Okay. So here, as you indicate in your e-mail to
13 yourself, "Spirit managed to grow both its capacity and
14 unit revenue," correct?

15 A. Correct.

16 Q. And you thought this was a good revenue report,
17 right?

18 A. It's an impressive result, yes.

19 Q. It was notable enough for you to write yourself a
20 note about it, right?

21 A. Correct.

22 Q. Okay. Mr. Clark, let's --

23 MR. THORNBURGH: Go ahead and take that document
24 down.

25 Q. Let's switch gears for a moment. I want to talk a

1 little bit about how JetBlue creates its fares and makes
2 them available for purchase.

3 Mr. Clark, to start, JetBlue sets its fares on a
4 market-by-market basis, correct?

5 A. I would say a route-by-route basis just to be a
6 bit more precise. But, yes, a "route" is one way to
7 define a market, so.

8 Q. Thank you. And when JetBlue sets fares in a
9 particular market, the airline takes into account the
10 competitive conditions on that route, right?

11 A. That's one of many inputs, yes.

12 Q. And the competitive conditions would include the
13 fares offered by other airlines operating on that route,
14 correct?

15 A. It can. It does not always. But it can.

16 Q. Mr. Clark, JetBlue most commonly files its fares
17 that it creates through what is called the "Airline
18 Tariff Publishing Company," or "ATPCO," correct?

19 A. That's correct.

20 Q. ATPCO serves as a sort of clearing house for
21 airfares for many different airlines, right?

22 A. Yes.

23 Q. Once JetBlue files its fares through ATPCO, those
24 fares typically become very easily visible to every
25 other airline in the industry, correct?

1 A. Most of them are public fares that are visible.
2 There's also the minority that are private fares that
3 aren't visible.

4 Q. Similarly JetBlue is able to see the fares offered
5 by other airlines that file the fares in ATPCO, correct?

6 A. Yes, this is one method of seeing other airline
7 fares.

8 Q. JetBlue monitors ATPCO to see the fares filed by
9 other airlines, correct?

10 A. It's one of the data sources we monitor, yes.

11 Q. In fact, Mr. Clark, ATPCO is the primary way that
12 JetBlue monitors the fares offered by its competitors,
13 correct?

14 A. It is, yes, it's the primary most common way that
15 we monitor, but not the only.

16 Q. Mr. Clark, similarly you understand that other
17 airlines monitor ATPCO as well, correct?

18 A. That's my broad understanding. I haven't worked
19 in another carrier. But that's my broad understanding.

20 Q. When JetBlue files fares in ATPCO, they include
21 terms and conditions in addition to just the price of a
22 fare, correct?

23 A. They can, yes.

24 Q. An example of a term or condition would be a
25 requirement of how far in advance of a flight a fare is

1 able to be purchased, correct?

2 A. That's correct.

3 Q. So, for example, the Court's heard testimony
4 already about "0 AP fares" or "walk-up fares." You're
5 familiar with those fares, correct?

6 A. Yes, I am.

7 Q. A "0 AP fare" means that there is no advanced
8 purchase requirement associated with purchasing that
9 fare, right?

10 A. Correct.

11 Q. Sometimes though there are advanced purchase
12 requirements associated with purchasing a fare, right?

13 A. Yes.

14 Q. It could be a 7-day AP, for example, right?

15 A. Yes, for example.

16 Q. Another example of a term or condition of sale
17 would be a last ticket date restriction, which
18 identifies the last date a fare can be sold, correct?

19 A. That's correct.

20 Q. The terms and conditions of JetBlue's fares that
21 are filed in ATPCO are visible to all the airlines that
22 use ATPCO, correct?

23 A. For the fares that are filed publicly, yes.

24 Q. And again, just to make sure the record is clear,
25 the terms and conditions of other airlines's fares that

1 are filed in ATPCO are also visible to JetBlue as well,
2 correct?

3 A. If they have filed it publicly, then, yes.

4 Q. As part of JetBlue's monitoring of ATPCO,
5 Mr. Clark, JetBlue will regularly create reports to
6 track, for example, fare changes by other airlines, is
7 that fair?

8 A. Yes.

9 Q. Okay, let's take a quick look at one of these
10 reports that JetBlue uses to monitor other airlines'
11 fare changes. Would you please turn to the tab in your
12 binder marked 388, please.

13 And we can go ahead and publish this for the
14 gallery, it's an exhibit that's already in evidence.

15 (On screen.)

16 A. (Turns.)

17 Q. Mr. Clark, this is an e-mail exchange you were
18 involved in from March 2021 with other colleagues in
19 JetBlue's Revenue Management Organization, correct?

20 A. Yes, that's correct.

21 Q. At this time you are the Vice-President of Sales
22 and Revenue Management at JetBlue, right?

23 A. Correct.

24 Q. Okay. Now I want to direct your attention, if we
25 could, to almost the very end of the exhibit. It's on

1 the page with the Bates number ending in 568.

2 A. (Turns.)

3 Q. Towards the top of this page is a table with the
4 heading "\$10 Increase Initiated by B6." Do you see
5 that?

6 A. I do.

7 Q. And as we discussed in court yesterday, B6 here
8 refers to JetBlue, correct, Mr. Clark?

9 A. Yes, that's correct.

10 Q. So this heading is indicating that JetBlue had
11 initiated a \$10 price increase in multiple markets,
12 right?

13 A. Um, yes, that's correct, in March of 2021.

14 Q. So even though JetBlue sets fares on a
15 market-by-market basis, sometimes JetBlue will try to
16 increase prices across multiple markets at the same
17 time, right?

18 A. If we're seeing a broad change in demand such as
19 the beginning of covid recovery, then, yes, you can do a
20 broad fare action.

21 Q. And to be clear, Mr. Clark, this is not a
22 system-wide price increase that JetBlue is initiating
23 here, right?

24 A. Um, it's under the heading -- at the top of this
25 page it says "INT/PR," which stands for

1 "International/Puerto Rico." Reading this now my
2 interpretation is that we increase fares in many,
3 potentially all markets in international Puerto Rico.
4 There's no mention of domestic on this page.

5 Q. Right. So there are other markets where JetBlue
6 operates where it didn't increase prices, correct?

7 A. That's certainly possible. I can't tell from this
8 page. But this does not cover our entire system.

9 Q. Well the chart on the screen in front of you
10 indicates that JetBlue initiated this increase in 138
11 markets, right?

12 A. Correct, but that could be the entirety of our
13 international Puerto Rico region, it's certainly not the
14 entirety of our whole system. That's correct.

15 Q. Thank you. So this chart, Mr. Clark, shows, for
16 example, that United matched JetBlue's \$10 price
17 increase in 15 markets, right?

18 A. Correct.

19 Q. And this chart is also indicating that Spirit
20 matched JetBlue's price increase in no markets, right?

21 THE COURT: It would be helpful -- he can read
22 this, but I'm having trouble. Where -- just point out
23 to me, sir, if you can describe it.

24 Where does it increase -- where does it tell you
25 that, um, United increased it in --

1 THE WITNESS: In 15.

2 THE COURT: -- in 15 markets?

3 THE WITNESS: So there's a column about two-thirds
4 of the way over labeled "UA."

5 THE COURT: Yes.

6 THE WITNESS: Which stands for "United Airlines,"
7 that's the airline code.

8 THE COURT: Oh, I see it. And that's the -- the
9 chart's there?

10 THE WITNESS: Correct, and the table.

11 THE COURT: Yes. Thank you.

12 THE WITNESS: And the top row is the number of
13 overall markets. So it appears they served 19 of the
14 routes where we increased the fare, and that they have
15 increased their fare in 15 of them for a 79 percent
16 ratio.

17 THE COURT: Okay.

18 Q. Now this table depicts "NK" as Spirit, correct,
19 Mr. Clark?

20 A. Correct.

21 Q. And it lists no overlap markets for Spirit and no
22 markets where there was a price increase, right?

23 A. Um, it does, but I believe that's more of a data
24 issue than -- there actually are no overlap routes.

25 Q. What's your understanding, Mr. Clark, of that data

1 issue?

2 A. Um, in its -- it was mentioned a bit at the e-mail
3 at the beginning of this. But in more recent years, um,
4 Spirit has not been making most of their fares public in
5 the -- in the ATPCO public tariff, so we've been meaning
6 to use other data sources to monitor Spirit fares.

7 Q. Okay, let's actually go to --

8 A. And likewise with Frontier as well, they're listed
9 with 0s on this chart. And potentially other ULCCs as
10 well.

11 Q. Okay, let's go actually to Page 3. Yeah, let's go
12 to Page 3 of the exhibit, please.

13 A. (Looks.)

14 Q. This -- there's a table at the top of page with
15 text indicating a \$10 fare increase initiated by
16 American Airlines. Do you see that?

17 A. I do.

18 THE COURT: What's the Bates's code?

19 MR. THORNBURGH: Your Honor, it's the page with
20 the Bates number ending in 553.

21 THE COURT: Thank you.

22 Q. Sorry, Mr. Clark, I apologize, I don't know if I
23 heard an answer to my question, so I'll just ask it
24 again to make sure we're on the same page.

25 So there's a table at the top of this page that

1 has text indicating a \$10 fare increase initiated by
2 American Airlines, right?

3 A. Correct.

4 Q. Okay. But as we discussed previously, it appears
5 this chart is actually tracking a JetBlue-initiated
6 price increase, correct?

7 A. I -- I vaguely recall. I believe during one of my
8 depositions we determined that the chart was mislabeled.
9 I don't remember that with clarity if it's this chart or
10 another one.

11 Q. So -- well just to direct your attention to the
12 chart, right, it depicts JetBlue as matching a price
13 increase in 323 of its 323 markets, right?

14 A. Yes. Thank you. Given the numbers in the chart,
15 it does appear that this was likely initiated by
16 JetBlue, and that there's a typo saying it was initiated
17 by American.

18 Q. Okay. And if we go to the right side of that
19 chart, Mr. Clark, the last column heading is F9, do you
20 see that?

21 A. I do.

22 Q. That is referring to Frontier Airlines, correct,
23 sir?

24 A. Correct.

25 Q. So it appears, in this report, that Frontier's

1 fare responses to JetBlue's price increase did show up
2 in JetBlue's reporting and monitoring of ATPCO, correct?

3 A. Correct, at this time in March of 2021, it appears
4 that it does, yes.

5 Q. Okay. And "NK" here refers to Spirit, right?

6 A. Correct.

7 Q. And on this monitoring of the reporting it's
8 consistent with the last chart we looked at, Spirit's
9 fares are not showing up, correct?

10 A. Correct, it's showing 0 overlap markets. But I do
11 believe we competed on some routes. So I think that's
12 the data, a lack-of-data issue.

13 Q. Okay.

14 MR. THORNBURGH: If we can go now back to the
15 front page of the exhibit, please.

16 (On screen.)

17 Q. And focusing our attention on the e-mail that you
18 wrote first, Mr. Clark, on March 4th, 2021.

19 The first thing you wrote in your e-mail to other
20 colleagues at JetBlue is that you're seeing a very high
21 level of matching in domestic fare level and
22 international, correct?

23 A. Correct, that's my first observation.

24 Q. "Matching" here refers to other airlines matching
25 the fares that JetBlue was offering, correct?

1 A. That's correct.

2 Q. Okay. And then, as we've been discussing, you
3 actually asked your colleagues, in the third bullet down
4 here, about why Spirit was listed as having 0 overlap
5 markets, correct?

6 A. Correct.

7 Q. And as we've discussed today, it's because
8 Spirit's lowest fares do not show up in JetBlue's
9 monitoring of ATPCO, correct?

10 A. Yes, the e-mail above this provides a little bit
11 more. But it says their lowest fares are not public.
12 So they're mostly irrelevant in this chart.

13 Q. Okay. And for the record that's an e-mail that
14 your colleague, Mr. Weiner, sent to you, correct?

15 A. Correct, in response to my question. Yes.

16 Q. Mr. Weiner works -- at this time worked for you in
17 the Revenue Management Organization, correct?

18 A. Correct.

19 MR. THORNBURGH: You can put that document aside,
20 Mr. Clark.

21 Q. Mr. Clark, JetBlue sells the majority of its fares
22 through its website, JetBlue.com, correct?

23 A. Correct.

24 Q. But JetBlue has other channels through which it
25 sells tickets as well, right?

1 A. Yes.

2 Q. One of those other channels, it is referred to as
3 "Global Distribution Systems," correct?

4 A. Yes, that's more of the piping to get to the
5 travel you see on the other side. But we use GS
6 providers to then sell, so you can see a travel agent.

7 Q. Global Distribution Systems are sort of
8 distributors for JetBlue to sell tickets to travel
9 agents, correct?

10 A. They're sort of the "data plumbing" between the
11 airline and the travel agency.

12 Q. JetBlue has contractual agreements with these
13 Global Distribution Systems or GDS providers, right?

14 A. That's correct.

15 Q. Those contractual agreements give those companies
16 access to the same fares that JetBlue sells through its
17 website, right?

18 A. Yes.

19 Q. And JetBlue only has a very limited ability to
20 sell cheaper fares through its website than it does
21 through GDSs or Global Distribution Systems providers,
22 correct?

23 A. Correct, we can do it in some places, but it's
24 fairly limited at this time.

25 Q. Okay.

1 MR. THORNBURGH: I want to take a look at another
2 document now, if we could, and this is Exhibit 408, it's
3 already in evidence.

4 You can go ahead and please publish it for the
5 Court.

6 (On screen.)

7 A. (Looks.)

8 MR. THORNBURGH: Your Honor, this exhibit is a
9 series of text messages between Mr. Clark and a
10 colleague, they were produced to us, each text message,
11 separately on a different page. For ease of the Court's
12 review of this exhibit, we created a demonstrative with
13 all the text messages on the same page. And we request
14 now to publish that demonstrative for the Court's
15 benefit.

16 THE COURT: Is this B?

17 THE CLERK: Yes, B.

18 THE COURT: All right, I have 408. And the
19 demonstrative?

20 MR. THORNBURGH: I believe the demonstrative, your
21 Honor, appears at the beginning of the tab marked 408.

22 (Pause.)

23 THE COURT: There's no objection to that, that may
24 be done.

25 Go ahead.

1 Q. Mr. Clark, this is a series of text messages that
2 you had with your colleague, Mr. Weiner, in March of
3 2020, right?

4 A. Correct.

5 Q. That's the same colleague that we saw on the prior
6 exhibit that you had an exchange with, right?

7 A. Yes.

8 Q. Mr. Weiner again at this time worked in Revenue
9 Management, right?

10 A. Correct.

11 Q. These text messages appeared to concern pricing
12 actions that you were contemplating taking at the time,
13 correct?

14 A. Correct, this is as covid is greatly impacting
15 customer demand. So demand was changing rapidly.

16 Q. In the first message you suggest that JetBlue
17 should "lower its fares to even more aggressively match
18 the fares offered by ultra-low-cost carriers in some
19 markets," right?

20 A. Yes, given the unique environment I'm proposing a
21 change from our normal strategy and to aggressively
22 match ULCC fares.

23 Q. And Mr. Weiner responds to you a little bit later
24 that day, right?

25 A. Yes, 30 minutes later.

1 Q. Mr. Weiner referred to "JetBlue getting very
2 aggressive," which you understood him to mean that
3 JetBlue was lowering its fares to better match the fares
4 offered by Spirit and Frontier, correct?

5 A. Correct, which is appropriate given the great
6 demand reduction happening at this time.

7 Q. And when Mr. Weiner wrote that "Execution is
8 challenging due to private nature," you understood him
9 to be referring to the fact that because Spirit's fares
10 don't show up in ATPCO, it's harder for JetBlue to
11 monitor them, right?

12 A. Correct, you have to use different data sources to
13 monitor them.

14 Q. You'd agree with me that that makes it more
15 difficult for JetBlue to track Spirit's fares, right?

16 A. Um, yes, more difficult, you have to use a
17 secondary source, not a primary.

18 Q. I want to go down now to the message that you sent
19 at 2:20 that day. Do you see that message, Mr. Clark?

20 A. I do.

21 Q. In that message you are instructing Mr. Weiner to
22 "only match American Airlines' moves in markets where
23 American had already taken fare-lowering actions,"
24 right?

25 A. Um, that's correct.

1 Q. And, I'm sorry, I think I -- I think I jumbled
2 that question so let me ask it a little more clearly.
3 You're instructing him to only match American Airlines'
4 fares in markets where American Airlines had already
5 taken a fare-lowering action, right?

6 A. Um, the e-mail specifically mentions inventory,
7 um, which would mean not changing the fare, but changing
8 the amount of seats available at each fare. So it's a
9 different method of selling lower fares without actually
10 lowering the fare themselves.

11 Q. Okay, thank you for making that clear. So you are
12 suggesting a change in inventory which has the effect of
13 making lower fares available to consumers, correct?

14 A. Correct, it makes previously-existing lower fares
15 even more available, um, more seats available in those
16 lower-fare inventory buckets.

17 Q. Okay, thank you.

18 Mr. Clark, when you referenced "game theory" in
19 your message here, you were pointing out to Mr. Weiner
20 that JetBlue had to consider how American was going to
21 interpret any action that JetBlue took, correct?

22 A. Correct, we always want to think about how
23 competitors will respond to our actions or what sort of
24 next steps in the chain of events could be.

25 Q. Right. You were concerned that if JetBlue took

1 fare-lowering action in additional markets, American
2 would interpret that as JetBlue spreading lower fares to
3 other markets, right?

4 A. Um, yes, or I'm theorizing it could be interpreted
5 as spreading, yes.

6 Q. And you wanted to avoid American having that
7 interpretation, correct, Mr. Clark?

8 A. They had a history at this time of being pretty
9 aggressive, so we wanted to think through it more
10 thoughtfully in that regard.

11 Q. And when you say they had a history of being
12 pretty aggressive at this time, what you mean is they
13 had a history of lowering fares, right?

14 A. They had a history of sometimes further lowering
15 fares. So you reduce fares to one level and then they
16 reduce it much further or much wider, something like
17 that. There have been some incidents in the time period
18 leading up to this.

19 Q. And that's what you were trying to avoid happening
20 here, right?

21 A. I'm mostly saying just keep in mind, you know,
22 think through what might happen and just think through
23 their past, um, you know, occurrences as we consider our
24 plan.

25 Q. And when you referred to, in your prior answer,

1 that you were trying to avoid wider fare action, you
2 meant that American would take action in additional
3 JetBlue markets, correct?

4 A. Well it doesn't say that specifically. I think
5 I'm just reminding the team to sort of think through
6 additional steps and potential responses.

7 Q. All right, I want to switch gears, Mr. Clark, and
8 talk a little bit now about the responsibility that you
9 have for JetBlue's network planning and strategy,
10 correct?

11 A. Correct.

12 Q. Mr. Clark, in the ordinary course of business
13 JetBlue creates 5-year-forward-looking network plans,
14 right?

15 A. Um, we do. They're high level. And I think in
16 the last couple of years it's more like 3 years, given
17 the greater uncertainty around covid. But, yes, in
18 general we have many times created 5-year look-forward
19 network plans.

20 Q. And when you say they're "high level," Mr. Clark,
21 you're referring to the fact that JetBlue -- those
22 future-forward-looking network forecasts, typically have
23 plans at the focus city or JetBlue region level,
24 correct?

25 A. Correct, that's where most of the focus would be,

1 at the city level. Any future routes would be sort of
2 placeholders at best.

3 Q. Okay. JetBlue's future network forecast filling
4 out 5 years do not include a route-by-route forecast
5 going out that far into the future, correct?

6 A. Correct.

7 Q. And in the ordinary course JetBlue also does what
8 are called "Quarterly Network Reviews" or "QNRs,"
9 correct?

10 A. Correct.

11 Q. That involves giving JetBlue's senior leadership
12 an update on JetBlue's network typically four times a
13 year, correct?

14 A. Yes.

15 Q. And these Quarterly Network Reviews, one of the
16 things that might be covered are new routes that JetBlue
17 is considering adding to its network, correct?

18 A. Correct.

19 Q. And when JetBlue is contemplating adding new
20 routes to its network, it will consider a variety of
21 metrics to determine the most viable candidates for that
22 expansion, correct?

23 A. Correct.

24 Q. One of those metrics is profitability, right?

25 A. Yes.

1 Q. JetBlue does not make a habit of starting service
2 on new routes that it knows will be unprofitable, right?

3 MR. SHORES: Objection, your Honor.

4 THE COURT: Well I'm going to sustain that. The
5 answer seems obvious.

6 A. The --

7 THE COURT: I'm sorry. Contrary to what has been
8 happening, I sustained that. You don't have to answer.

9 (Laughter.)

10 A. Um, most often --

11 THE COURT: You want to answer it even though you
12 don't have to?

13 (Laughter.)

14 THE WITNESS: The question was incorrect, so I was
15 going to clarify.

16 THE COURT: Well I think we'll let them ask the
17 question.

18 (Laughter.)

19 THE WITNESS: Okay.

20 Q. Another metric JetBlue will consider is
21 "operational feasibility," correct, Mr. Clark?

22 A. Yes.

23 Q. That means considering whether JetBlue can
24 reliably serve the route given JetBlue's current fleet
25 and existing network, correct?

1 A. Correct.

2 Q. As best you can recall, JetBlue has never started
3 offering nonstop service on a new route in which it was
4 not previously operating at either airport on the ends
5 of that route, correct?

6 A. Um, correct, I cannot recall any new route that we
7 did not already operate at one of the two airports.

8 Q. That would be unusual then, right, Mr. Clark?

9 A. For JetBlue, yes.

10 Q. One reason it would be unusual for JetBlue is
11 because when JetBlue starts offering service on a new
12 route, typically there's a ramp-up period associated
13 with offering that new service, correct?

14 A. Correct, a ramp-up in customer awareness of our
15 superior product and on-board experience.

16 Q. Another metric that JetBlue considers when adding
17 new routes is "strategic importance to JetBlue," right?

18 A. Yes.

19 Q. And that would involve, for example, considering
20 to what extent the new routes would help improve
21 JetBlue's relevance to its customers, right?

22 A. Correct.

23 Q. Now, Mr. Clark, we discussed yesterday that
24 JetBlue focuses its network on 6 focus cities, correct?

25 A. Yes.

1 Q. And 90-plus percent of JetBlue's network touches
2 one of those 6 focus cities, correct?

3 A. Correct.

4 Q. JetBlue offers flights from those focus cities to
5 other airports that are, for example, hubs for airlines
6 such as American, United, or Delta, correct?

7 A. Correct.

8 Q. As just one example, JetBlue serves Chicago O'Hare
9 today from both Boston and JFK, right?

10 A. Correct.

11 Q. O'Hare is a hub for American and United, right?

12 A. Yes.

13 Q. Now O'Hare is typically a below-average airport
14 for JetBlue in terms of financial performance, right?

15 A. Um, yes, I think that's generally accurate.

16 Q. JetBlue has had difficulty growing to more than 5
17 flights a day at O'Hare, right?

18 A. Correct.

19 Q. Similarly JetBlue serves George Bush
20 Intercontinental Airport in Houston, right?

21 A. We do, yes.

22 Q. That airport is a hub for United, right?

23 A. Correct.

24 Q. JetBlue faces some of the same challenges at
25 Intercontinental Airport as it does at Chicago O'Hare,

1 correct?

2 A. Yes, although we have not aspired to grow these
3 airports larger than they are either. It's not that
4 we've tried and failed. We haven't tried much.

5 Q. Going back to just O'Hare for a second, Mr. Clark.

6 JetBlue previously offered service from Chicago
7 O'Hare to Fort Lauderdale Airport, correct?

8 A. Yes, that's correct.

9 Q. And JetBlue cut that service in the last few
10 years, correct?

11 A. We no longer serve them, that's correct.

12 Q. Going back to George Bush Intercontinental Airport
13 then.

14 It's fair to say that JetBlue's profit margin at
15 that airport is likely negative today, right?

16 THE COURT: Would you ask that again? Forgive me.

17 MR. THORNBURGH: Of course, your Honor.

18 Q. So just going back to our discussion about George
19 Bush Intercontinental Airport in Houston, my question to
20 Mr. Clark was whether he would agree that JetBlue's
21 profit margin at that airport is likely negative today?

22 A. Likely, but not certainly.

23 Q. One of the primary reasons JetBlue's faced some
24 difficulties at both O'Hare and Houston Intercontinental
25 is because both airlines are hubs for other airlines,

1 right?

2 A. Um, yes, that's one of the reasons.

3 Q. Now, Mr. Clark, at both of those airports, O'Hare
4 and Houston Intercontinental, JetBlue is today primarily
5 serving the business customers, flying from those
6 airports to Boston, right?

7 A. Um, no, I don't agree.

8 Q. You don't agree with that?

9 A. I don't agree that our primary customer from -- on
10 the Houston-to-Boston flight is a business customer who
11 lives in Houston.

12 THE COURT: You added "who lives in Houston."

13 THE WITNESS: That's how I interpreted the
14 question.

15 THE COURT: Yeah, but if we take that out of it,
16 you still don't agree?

17 THE WITNESS: The Boston to Houston route will
18 have a heavier mix of business customers than a normal
19 15 percent mix. Um, yes, I do agree with that.

20 Q. Okay. And that is in contrast to Spirit,
21 Mr. Clark, which you understand to be almost entirely
22 serving the leisure customers at those airports,
23 correct?

24 A. Correct, I think their leisure mix is higher than
25 ours at those airports.

1 Q. Okay, let's go to a slightly different topic now,
2 Mr. Clark.

3 Prior to JetBlue's pursuit of Spirit in early
4 2022, JetBlue considered alternative growth scenarios as
5 a standalone airline, correct?

6 A. That's correct.

7 Q. And in fact you presented on those alternative
8 growth options to the Senior Leadership Team at JetBlue
9 shortly after taking on your current role as JetBlue's
10 Head of Revenue and Planning, correct, sir?

11 A. Correct.

12 Q. Okay. And again, just to be clear, those
13 alternative growth scenarios contemplated JetBlue
14 growing as a standalone airline, correct?

15 A. Correct.

16 Q. Let's take a look at some of those growth
17 scenarios that you presented on. If you could please
18 turn to the tab in your binder marked NX, please.

19 A. (Turns.) I'm there.

20 Q. Mr. Clark, this is an e-mail that you received on
21 January 31st, 2022, right?

22 A. Correct.

23 Q. Attached to the e-mail is a presentation that you
24 gave on growth scenarios that we've been discussing,
25 right?

1 A. Um, yes, it references the network presentation
2 slides which include growth scenarios.

3 Q. And at this time, Mr. Clark, in 2022, Frontier and
4 Spirit had not yet announced their merger agreement,
5 correct?

6 A. Um, I don't believe -- I believe that is correct.
7 I'm not 100 percent sure, but I believe that's correct.

8 MR. THORNBURGH: Your Honor, plaintiffs request
9 that NX be moved in evidence as Exhibit 655.

10 THE COURT: No objection?

11 MR. SHORES: No objection.

12 THE COURT: NX is admitted, Exhibit 655.

13 (Exhibit 655, marked.)

14 MR. THORNBURGH: Your Honor, this exhibit has been
15 redacted at the request of counsel for defendants. But
16 just to somewhat anticipate your question yesterday, we
17 do think that the material underlying those redactions
18 is relevant to your Honor's decision, but we've redacted
19 it at the request of defense counsel at this time.

20 THE COURT: Well how am I going to get that
21 material if you think it's so important?

22 MR. THORNBURGH: The material is in your binder in
23 front of you, your Honor, so you'll be able to see the
24 pages without the redactions. And we're happy to
25 explain to the Court in briefing if the Court --

1 THE COURT: No, no, so long as I have it now.

2 MR. THORNBURGH: Yes.

3 THE COURT: All right, that's fine.

4 MR. THORNBURGH: Thank you, your Honor.

5 Could we publish this document and exhibit for the
6 gallery?

7 THE COURT: Well --

8 MR. THORNBURGH: The redacted version of the
9 document, your Honor, I'll just put it on the screen.

10 THE COURT: You may.

11 MR. THORNBURGH: Okay. Thank you.

12 (On screen.)

13 Q. Okay. Mr. Clark, I want to direct your attention
14 to Page 14 of this exhibit. It has a Bates number
15 ending in 976.

16 A. (Turns.) Yes.

17 Q. Mr. Clark, you are listed as a presenter for two
18 of these network presentations here, right?

19 A. That's correct.

20 Q. And that's consistent with your recollection that
21 you presented on these topics?

22 A. Yes.

23 MR. THORNBURGH: Could we go to Page 30 of the
24 exhibit now, please.

25 And, your Honor, that page has a Bates number, um,

1 ending in 992, I believe.

2 THE COURT: Thank you.

3 MR. THORNBURGH: I apologize. I'd like to go back
4 for a moment, your Honor. I apologize.

5 Can we please stop on the page ending in 982,
6 please.

7 (On screen.)

8 MR. THORNBURGH: The page ending in 982 has a
9 heading reading "The decade of consolidation has led to
10 the decade of expansion."

11 THE COURT: I have it.

12 MR. THORNBURGH: You have it. Great.

13 (On screen.)

14 Q. So, Mr. Clark, this slide is indicating that
15 Spirit at this time was set to become larger than
16 JetBlue beginning in 2025, right?

17 A. Correct, and that's a concern, because scale's
18 important in this industry.

19 Q. And the question asked at the bottom of the slide
20 is "Should JetBlue increase its current growth
21 trajectory?" Right?

22 A. Correct, that's the question at the bottom.

23 Q. Okay.

24 MR. THORNBURGH: Now we can go to Page 30, your
25 Honor, and I apologize for the detour.

1 THE COURT: All right. Which is 992?

2 MR. THORNBURGH: Yes, your Honor.

3 (On screen.)

4 Q. Mr. Clark, this slide is summarizing the four
5 growth scenarios that JetBlue was contemplating at this
6 time, right?

7 A. Correct.

8 Q. The first growth scenario listed on this page is
9 JetBlue's 5-year plan that was in existence at that
10 time, right?

11 A. Correct.

12 Q. The second growth scenario here lists -- that
13 contemplates "10 additional mint aircrafts" that JetBlue
14 would have acquired as part of that growth plan, right?

15 A. Yes.

16 Q. And, um, then there's a third growth plan listed
17 there that is titled "Industry plus 4.2 points." Do you
18 see that?

19 A. I do.

20 Q. Do you have an understanding of what that refers
21 to?

22 A. It's a scenario where our growth rates would be
23 4.2 faster -- 4.2 points faster than the industry growth
24 rate, which is the growth rate we had had for most of
25 the decade leading up to covid.

1 Q. Thank you. The last growth plan listed there, um,
2 do you have an understanding of what that growth plan
3 refers to?

4 A. I believe it's the growth needed to remain larger
5 than Spirit plus Frontier's, um, combined size.

6 Q. But again as we discussed earlier, at this time
7 Spirit and Frontier had not yet announced the merger
8 agreement, right?

9 A. I believe that's correct.

10 Q. Now the following information I would ask about is
11 redacted, Mr. Clark, so I'm not going to ask you for
12 specific figure information, but I just want to give a
13 kind of big -- give a big picture idea of what's going
14 on here for the record.

15 Each of the growth plans, going from the top of
16 the chart, starting a 5-year plan, to the bottom, would
17 require additional -- would require JetBlue to obtain
18 additional aircraft, is that right?

19 A. So the first year of the 5-year plan was with our
20 existing fleet plan, and then the three scenarios below
21 that would require additional aircraft beyond our fleet
22 plan at that time.

23 Q. Okay. Now, Mr. Clark, after you presented these
24 growth plans, there was some discussion among the
25 JetBlue Senior Leadership Team about the two more

1 aggressive growth plans, the ones listed at the bottom
2 of this chart, being "infeasible," correct?

3 A. So from a strategic perspective we like them
4 because scale is very important in this industry, but
5 from an aircraft availability perspective they were
6 largely judged infeasible given the shortages of
7 aircraft available from the manufacturers.

8 Q. Well, Mr. Clark, it wasn't just that there was a
9 question about the availability of aircraft, you would
10 agree with me that part of the reason those were deemed
11 infeasible is because of the capital expenditures that
12 would be required to obtain those additional aircraft,
13 right?

14 A. Um, I believe that was a consideration as well.
15 It's not my area of expertise. But, yes, I do recall
16 the conversation. There's a lot of Cap X associated.

17 Q. Those more aggressive growth plans would require
18 JetBlue to spend a lot of cash, right?

19 A. Correct, on plans that may or may not even be
20 available given the long lead times from the
21 manufacturers.

22 Q. And at this point in early 2022, your recollection
23 was that JetBlue had been hemorrhaging money for 2
24 years, correct?

25 A. It was during covid, it was a very difficult time.

1 Q. But you would agree with me that JetBlue had been
2 hemorrhaging money for 2 years, right?

3 A. We've been -- we've reported financial losses for
4 the 2 years leading up to this, yes.

5 Q. And JetBlue went on to lose money for the full
6 year of 2022, correct, sir?

7 A. Correct.

8 Q. Now, Mr. Clark, the three more aggressive growth
9 plans listed on this chart would have involved JetBlue
10 growing as an independent airline, right?

11 A. Correct, these were scenarios for independent
12 growth.

13 Q. And then a few months later in March of 2022,
14 JetBlue made an initial offer to acquire Spirit, right?

15 A. Um, yes, I don't recall the exact timeline, but
16 that aligns with my general recollection.

17 Q. And JetBlue ultimately had to spend \$3.8 billion
18 in cash to acquire Spirit, right?

19 A. I believe that was the agreed-upon price, yes.

20 Q. But unlike these growth plans that we've been
21 discussing, the acquisition of Spirit would eliminate
22 Spirit as an independent competitor, right?

23 A. Sure.

24 MR. THORNBURGH: Put that document aside.

25 Q. Mr. Clark, one of the responsibilities you had in

1 connection with JetBlue's bid for Spirit was to oversee
2 the estimate of "revenue synergies," right?

3 A. Correct, I provided a high-level, um, review of
4 those.

5 Q. The actual revenue synergies calculations was led
6 by Eric Friedman, right?

7 A. Correct.

8 Q. Mr. Friedman reported to you, correct, sir?

9 A. Correct. And I should note that Mr. Friedman led
10 the revenue synergies that were related to the network.
11 Or the overall synergies was led by the strategy team,
12 including some other revenue synergies not related to
13 the network.

14 Q. Thank you for that clarification.

15 So there were certain categories of revenue
16 synergies that you had ownership of and there were other
17 categories of revenue synergies that were outside of
18 your purview, is that fair?

19 A. That's correct.

20 Q. Okay. And I think as the Court has heard
21 previously, these revenue synergies represented
22 additional money or revenue that JetBlue expected to
23 earn as a result of its acquisition of Spirit as
24 compared to the revenue that the two airlines could earn
25 themselves today as independent companies, right?

1 A. Correct.

2 Q. Mr. Clark, in June of 2022, you presented to the
3 JetBlue board of directors the estimates of revenue
4 synergies that you were responsible for, correct?

5 A. Correct.

6 Q. Let's take a look at a few of these synergies in
7 more detail.

8 If you could please turn to the tab in your binder
9 marked NE, please.

10 A. (Turns.)

11 Q. Mr. Clark, this document described the categories
12 of revenue synergies that you had responsibility for
13 overseeing, correct?

14 A. Yes, that's correct.

15 Q. Okay. And this document contains notes on those
16 revenue synergies, right?

17 A. Um, yes.

18 MR. THORNBURGH: Your Honor, plaintiffs ask that
19 NE be moved in evidence as 656.

20 THE COURT: No objection?

21 MR. SHORES: No objection.

22 THE COURT: NE is admitted, 656.

23 (Exhibit 656, marked.)

24 Q. Mr. Clark --

25 MR. THORNBURGH: Let's please publish it to the

1 gallery.

2 Q. Mr. Clark, this exhibit contains notes of four
3 categories of revenue synergies that you have
4 responsibility for, right?

5 A. Yes.

6 Q. Okay, let's start on the bottom half of the first
7 page. There's a synergy there entitled "Network
8 Optimization," right?

9 A. Yes.

10 Q. The idea behind this synergy category was that
11 JetBlue would be able to earn additional revenue by
12 redeploying Spirit aircraft from underperforming routes
13 to other routes where presumably they would make more
14 money for the combined airline, right?

15 A. Yes, but every airline does that on their own on a
16 continuous basis, so it's the value to me from having
17 the larger network to redeploy into.

18 Q. Okay, I appreciate that answer. I want to, and
19 just for a moment, I'm stepping back from this document.

20 One of the other responsibilities that you had,
21 Mr. Clark, in connection with an acquisition of Spirit,
22 was overseeing the creation of a network plan for the
23 combined airline, right?

24 A. Correct.

25 Q. That is referred to, by many people, as the

1 "Combined Network Plan," right?

2 A. Yes.

3 Q. Now, Mr. Clark, that Combined Network Plan has
4 routes and frequencies for every year going out to 2027,
5 right?

6 A. Correct.

7 Q. The Combined Network Plan was created earlier this
8 year in 2023, right?

9 A. Correct, early this year. Yes.

10 Q. So it was at least 6 or more months after these
11 revenue synergies that you presented to the JetBlue
12 board of directors, right?

13 A. Correct.

14 Q. Now, Mr. Clark, the Combined Network Plan assumes
15 that after the acquisition is complete, JetBlue will
16 continue flying all of the routes that each of JetBlue
17 and Spirit fly today, right?

18 A. Um, correct, that's a base assumption.

19 Q. So another way of saying this is that the Combined
20 Network Plan assumes no redeployment of JetBlue or
21 Spirit aircraft, right?

22 A. No, it, um -- airlines, as I've said, are
23 continuously redeploying aircraft. Spirit, you know
24 over the past months, has been canceling and redeploying
25 aircraft. So we decided not to try to guess ahead of

1 time which routes they might cancel or pull their
2 frequency on and which routes we might. So as a
3 simplifying assumption and since it's going to impact
4 the results of the analysis, we just kept all the routes
5 in rather than guessing which ones they or we might pull
6 for a higher performance in the future.

7 Q. Right, so it assumes no redeployment, correct,
8 under the plan?

9 MR. SHORES: Objection, it mischaracterizes his
10 testimony.

11 THE COURT: Actually it does. I didn't hear him
12 say that.

13 Q. I'm just trying to understand. The Combined
14 Network Plan -- let me ask it in a slightly different
15 way, assumes that JetBlue and Spirit will continue
16 operating all the routes the two airlines operate today,
17 right?

18 MR. SHORES: Objection, asked and answered.

19 THE COURT: It is, and he properly stated that.
20 That's his assumption. But what planes fly on those
21 routes, the frequency, and I'm interpolating here, but
22 that's the inference, that they can effectively disperse
23 their combined fleet over the network that the two fly
24 today.

25 Have I got that right?

1 THE WITNESS: Yes.

2 Q. Mr. Clark, this network optimization synergy,
3 focusing on the page in front of you, what's
4 contemplated by that synergy is redeploying aircraft
5 from some Spirit routes to other routes, is that right?

6 MR. SHORES: Objection, asked and answered.

7 THE COURT: Oh, no, that's a different question.
8 Overruled. And you may answer it.

9 A. The network optimization synergy looks at -- so as
10 I mentioned, all airlines continuously remove
11 frequencies, remove routes, and redeploy them in other
12 places they think will be more productive. This synergy
13 gives additional revenue for the fact that not only can
14 it be deployed onto just Spirit's network, but they can
15 now be deployed onto the JetBlue and Spirit combined
16 network, which is twice as large, and that should lead
17 to bigger benefits because you have more areas of
18 opportunity to redeploy those aircraft to.

19 Q. Consistent with your testimony just now,
20 Mr. Clark, you would expect that after the transaction
21 closes, if it were to close, JetBlue would, as a
22 combined airline, redeploy some planes from
23 underperforming routes to better-performing routes,
24 correct?

25 A. We do that on a continuous basis as to Spirit.

1 So, yes.

2 Q. Let's go back to the document and I want to direct
3 your attention to the top of the first page if we could.
4 There's a bullet there that reads "Customer Service
5 Premium."

6 Do you see that?

7 A. I do.

8 Q. That's another one of the revenue categories that
9 you had ownership of, right?

10 A. Correct.

11 Q. Now this synergy refers to additional revenue that
12 JetBlue estimated it could obtain by converting Spirit
13 aircraft to JetBlue aircraft, right?

14 A. Correct, from their configuration and their
15 customer offering to our on-board configuration and our
16 customer offering.

17 Q. And one of the differences between the Spirit
18 customer offering and the JetBlue customer offering is
19 that Spirit planes have more seats on their planes today
20 than JetBlue planes, right?

21 A. Yes, they're very tightly packed without a lot of
22 leg room.

23 Q. And so in order to convert from the Spirit
24 customer experience to the JetBlue customer experience
25 approximately 20 seats would come off of every Spirit

1 aircraft, right?

2 A. The number varies. That sounds a little high.
3 But we have more leg room for each seat, which leads to
4 fewer seats on board.

5 Q. And so the idea here, Mr. Clark, is that, as
6 indicated on the slide -- on the page in front of you,
7 is that JetBlue assumed customers would see the value of
8 the better, quote, "JetBlue product" and would be glad
9 to adjust by 24 percent, right?

10 A. Yes, that's how the slide references it, that the
11 customers will see the value and the superior product
12 and we will generate more revenue per seat due to that.

13 Q. And the "glad to adjust" language here refers to
14 JetBlue's belief that customers would be willing to pay
15 24 percent more to fly on JetBlue than they do on Spirit
16 today, correct?

17 A. We know many customers would happily do this. We
18 constantly have customers asking us to fly on Spirit
19 routes so they have more options than just Spirit to fly
20 on.

21 (Pause.)

22 MR. THORNBURGH: Put that document aside,
23 Mr. Clark.

24 Q. You said in your answers a few minutes ago that
25 you know customers will be willing to pay more for

1 JetBlue than for Spirit, is that an accurate
2 characterization of your testimony?

3 A. We have many customers who request that we start
4 flying its routes saying they would much rather have a
5 JetBlue offering at a JetBlue price. They want more
6 options than Spirit. We get those requests regularly.

7 Q. To be clear though, Mr. Clark, JetBlue has not
8 undertaken any sort of quantitative analysis to better
9 understand how many customers would be willing to pay
10 more for the JetBlue products as compared to the Spirit
11 products, is that fair?

12 A. I believe that's correct.

13 Q. Okay. I just want to look fairly quickly here at
14 a few prior statements you've made regarding how much
15 customers value the JetBlue product compared to the
16 Spirit product.

17 If you could please turn in your binder to the tab
18 marked LQ, please.

19 A. (Turns.)

20 Q. Mr. Clark, this is an e-mail you wrote in August
21 2020 to other colleagues in connection with an upcoming
22 JetBlue Senior Leadership Meeting, right?

23 A. Um, yes, that's correct.

24 Q. Okay.

25 MR. THORNBURGH: Your Honor, plaintiffs request

1 that LQ be admitted in evidence as Exhibit 657.

2 THE COURT: No objection to LQ?

3 MR. SHORES: No objection, your Honor.

4 THE COURT: LQ is admitted, Exhibit 657.

5 (Exhibit 657, marked.)

6 Q. Mr. Clark, the subject of this e-mail that you
7 wrote is "Customer Product and Pricing Innovation." I
8 should say it's partially the subject, correct?

9 A. That's correct.

10 Q. Okay, let's take a look at the e-mail that you
11 wrote.

12 In your e-mail here you're sharing some thoughts
13 about JetBlue's competitive strategy going forward,
14 right?

15 A. Um, I'm sharing thoughts at this time and during
16 the height of covid, yes.

17 Q. You offer, in the third paragraph here, a "major
18 hypothesis," right?

19 A. Correct, I interpret that to be my main
20 hypothesis, yes.

21 Q. And as you indicate here, JetBlue had an extremely
22 difficult time charging price-sensitive customers more
23 for the JetBlue product as compared to either the Spirit
24 or United Basic Economy product, right?

25 A. At that time that's how I felt.

1 Q. So as a result of that, this forced JetBlue to do
2 things like match Spirit pricing, correct?

3 A. At that time we needed to, yes.

4 Q. And because JetBlue couldn't reliably price above
5 Spirit, you suggest in the next paragraph that JetBlue
6 should "strip down Blue Basic to make it as close as
7 possible to the Spirit unbundled fare and the United
8 Basic Economy," right?

9 A. That's what I say there. I think I've been proven
10 wrong over the past 3 years on this, however.

11 Q. Mr. Clark, at this time do you have a sense of how
12 many of JetBlue's customers were purchasing Blue Basic?

13 A. Yes, at this time it was, um, roughly two-thirds
14 of our customers, um, and that number has come way down,
15 now only roughly a third as customer awareness of the
16 different choices has become more prevalent.

17 Q. Still more than 30 percent, I think was your
18 testimony yesterday, correct, sir?

19 A. Roughly a third, yes.

20 Q. The bottom of this first page you suggest that
21 "JetBlue consider removing unlimited free WIFI from its
22 Blue Basic product," right?

23 A. I'm sort of speculating in this e-mail. We had
24 discussions and I fully agree that that wasn't the right
25 course. But at this time I'm stating that as an option

1 to debate and consider.

2 Q. If JetBlue had done that, it would have -- it
3 would have stripped down Blue Basic even more, correct?

4 A. Um, correct, and undermined one of the main sort
5 of brand promises of JetBlue.

6 Q. Let me direct you now to Page 2 of this e-mail
7 that you wrote.

8 You reference, in the paragraph below the bulleted
9 material, the threat that JetBlue was facing from
10 Spirit, right?

11 A. (Reads.) Again this is how I'm feeling at the
12 time, at the height of covid three years ago.

13 Q. And at this time your proposed solution was "to
14 match Spirit very aggressively on price," right?

15 A. At the time that's how I was feeling.

16 Q. Okay.

17 MR. THORNBURGH: Would you put that document
18 aside, Mr. Clark. There's just one more thing I wanted
19 to do with you at this time.

20 If you would please turn in your binder to the tab
21 marked GB, please.

22 A. (Turns.)

23 Q. Mr. Clark, this is an e-mail that you wrote on
24 January 3rd, 2022, right?

25 A. Correct.

1 Q. And this is just a few months before JetBlue
2 started pursuing an acquisition of Spirit, correct?

3 A. It was the same year, yes.

4 Q. The e-mail was in reference to a strategy review
5 that JetBlue was undertaking at the time, right?

6 A. Um, that's the subject of this e-mail exchange,
7 yes.

8 Q. Okay.

9 MR. THORNBURGH: Your Honor, plaintiffs ask that
10 GB be moved in evidence as Exhibit 658.

11 MR. SHORES: No objection.

12 THE COURT: GB is admitted, Exhibit 658.

13 (Exhibit 658, marked.)

14 MR. THORNBURGH: Thank you, your Honor.

15 Q. Mr. Clark, in the first paragraph of your e-mail
16 you are expressing concern that "only a minority of
17 customers may actually be willing to pay even just a bit
18 more for JetBlue's product offering," correct?

19 A. That was my fear at the time. I think the data
20 has proven that since.

21 Q. And you're referring in your e-mail here to both
22 JetBlue customers and customers as a whole, right?

23 A. Correct.

24 Q. And then in the second paragraph, you identify
25 some characteristic of customers who may not be willing

1 to pay just a bit more for JetBlue's product offering,
2 right?

3 A. Correct.

4 Q. And one of the characteristics that you identify
5 is customers who purchase a Basic Economy or a Blue
6 Basic product, right?

7 A. I do, and I note that at that time about half the
8 purchasing of Basic Economy, we discussed that that
9 number was reduced quite a bit over the past year and a
10 half or two years.

11 Q. So, Mr. Clark, as we looked at it a few minutes
12 ago, as a result of this acquisition, Spirit customers
13 would have to pay more -- Spirit customers who fly on
14 Spirit today would have to pay more to fly on JetBlue
15 after the acquisition is complete, right?

16 MR. SHORES: Objection, mischaracterizes the
17 testimony.

18 THE COURT: He may be allowed to ask the question.
19 We'll see what the witness says.

20 A. Not necessarily.

21 Q. You would agree with me that some customers would
22 likely have to pay more to fly on JetBlue after the
23 acquisition is complete as compared to flying on Spirit
24 today, right, Mr. Clark?

25 A. Some customers, in exchange for a superior

1 product, may end up paying more, yes.

2 Q. But some of those customers may not be willing to
3 pay even a bit more, as demonstrated in your e-mail in
4 front of you, correct, Mr. Clark?

5 MR. SHORES: Objection, your Honor.

6 THE COURT: Overruled.

7 A. Um, there's lots of ULCCs in this market. We've
8 made divestitures. So if there's a market for a ULCC
9 product, I'm confident that one will be there to serve
10 those customers.

11 Q. What about markets where there isn't another
12 ultra-low-cost carrier, Mr. Clark?

13 A. There's very low barriers to entry. And where
14 there are any of these, we've made divestitures to
15 eliminate them.

16 Q. And if another ultra-low-cost carrier doesn't
17 enter that market?

18 A. Then there must not be much demand for an ultra-
19 low-cost product in that market.

20 MR. THORNBURGH: I have no further questions for
21 Mr. Clark at this time, your Honor.

22 THE COURT: In view of the hour, it's close to the
23 recess, do you want to inquire of this witness now or
24 reserve?

25 MR. SHORES: I'm happy to start now or we can take

1 a break, your Honor.

2 THE COURT: Not my question.

3 Yes, the break is in my mind, and if you're going
4 to ask questions, we'll take a break. I was being more
5 procedurally concerned.

6 Do you want to inquire -- he's called as an
7 adverse witness, that invokes certain rules. Do you
8 want to inquire as part of their case in chief or
9 reserve, because you have the right to call him as part
10 of your case?

11 What about that question?

12 MR. SHORES: I would like to inquire of him now,
13 your Honor. I misinterpreted your question. I'm sorry,
14 your Honor.

15 THE COURT: No, "now" can be at 10 minutes after
16 11:00.

17 MR. SHORES: That's all right.

18 (Laughter.)

19 THE COURT: We'll take a recess until then. We'll
20 recess.

21 (Recess, 10:40 a.m.)

22

23

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C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Thursday, November 2,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 11-02-23

RICHARD H. ROMANOW Date